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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,431	01/22/2001	William M. Johns	111788.00101	9036

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER

TRUONG, LAN DAI T

ART UNIT	PAPER NUMBER
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2152

MAIL DATE	DELIVERY MODE
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11/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/765,431

Applicant(s)

JOHNS ET AL.

Examiner

Lan-Dai Thi Truong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/20/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/22/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

1. This action is response to re-appeal brief request filed on 08/20/2007. Claims 1-14 are pending.

2. Applicant's arguments (filed on 08/20/2007) with respect to the rejection(s) under the 35 USC § 103 as being un-patentable over Curley et al. (U.S. 2002/0120727) in view of Phaal (U.S. 6,894,972) do not disclose claimed feature of: "determining a response for each segment of the network" have been fully considered and are persuasive

3. However, upon further consideration, the Office recognizes that Curley et al. (U.S. 2002/0120727) clearly teaches the feature of "determining a response for each segment of the network." For making clear this point a new Final rejections are made (under the same ground(s) of the previous Final rejections), see the following rejections for details

Drawing Objections

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the "entry servers" as described in the specification, page 10, lines 24-25. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior

version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim rejections-35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C 103(a) as being un-patentable over Curley et al. (U.S. 2002/0120727) in view of Phaal (U.S. 6,894,972)

Regarding claim 1:

Curley discloses the invention substantially as claimed, including a method, which can be implemented in a computer hardware or software code for monitoring performance and availability of application servers on a network, the method comprising:

Running at least one performance monitor process on the network, said at least one performance monitor process watching network activity to and from the application servers to entry servers which connect the network to end user's workstation: (Curley discloses "remote monitor servers" (which performances monitor process as claimed) place worldwide for collecting network performances i.e. round-trip network latency: figure 1, items 20, 14; [0138])

creating a transaction response time log and activity audit trail for the network: (in Curley's system, "an actual report of performance/ historical results reporting network latency time, processing time, network transport time and remaining http content time etc" (which implements functionality of response time log/activity audit trail for the network as claimed) is formed based on derived monitoring information collected from the remote monitor servers: figure 9, item 16D; figure 1; figure 2, items 18; figure 5; [0014]; [0138]; [0242])

establishing a connection from the network monitor manager process to at least one performance monitor process to control said at least one performance monitor: (Curley discloses "a global remote network monitor system/central server" (which implements functionality of the network monitor manager as claimed) controls monitoring processes of a plurality of network monitor servers resides at different geographical locations: figure1; figure 7, items 102, 103, 104, 111, 112 and 114; abstract; [0008]-[0011]; [0162]-[0163]; [[0021]; [0049]; [1010])

running a network monitor manager process on the network, for consolidating information from the transaction response time log: (in Curley' system, each of the network monitor server monitors the activities between an application server and client and then reports the monitoring results to central database to form a comprehensive subscription package

containing measured response times collected from the plurality of monitor servers: [0132]-[0133]; [0136]-[0138]; [0100]-[0102]; [0015]; [0053])

sending a pseudo message to tracking time in the network to an entry server to determine said network availability: (in Curley' system, "monitoring server requests" (which represents functionality of a pseudo message as claimed) are sending all over different geographical locations to monitor site availability, response time...etc: figure 7; figure 1; figure 9; [0010]; [0015]; [0138]-[0143]; [0012]-[0014]; [0051]; [0065])

receiving the pseudo message from said at least one performance monitor process: (as similar to rejections addressed above, "monitoring server requests" (which represents functionality of a pseudo message as claimed) are sending all over different geographical locations to monitor site availability, response time...etc: figure 7; figure 1; figure 9; [0010]; [0015])

determining a response for pseudo message to determine where problems regarding said availability exist within the network connection: (Curley discloses each of the network monitor servers is capable to trigger/ and determine where in the network causes problem and report the problem to global remote network monitor system/central server: [0041]-[0044]; [0014]; [0063]; [0049])

However, Curley does not explicitly disclose each segment of network being monitored and determined network problems

In analogous art, Phaal discloses a network monitor system for monitoring network segments (column 1, lines 44-46); the network monitor system comprises one or more monitor servers; wherein each of the monitor server is capable to control processes of a plurality of

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monitor agents those implement on different plurality of network segments in order to determine if any network problem occurs in the network segments: (column 4, lines 31-67; column 5, lines 1-14; column 14, lines 1-25)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Phaal's ideas of monitoring plurality network segments independently, then merging monitored results into a unit monitor centralize into Curley's system in order to increase flexibilities/ and efficiencies for network monitoring system such as which can be expanding network monitor services for larger range; can provide an efficient centralized network problem analysis, see (Phaal: column 4, lines 30-67; column 5, lines 1-20)

Regarding claim 2:

In addition to rejection in claim 1, Curley - Phaal further discloses method for detecting at least one possibly failed component of the network: (Phaal discloses method for detecting failed network component based on measured response time: [0009])

Regarding claim 3:

This claim is rejected under rationale of claim 1

Claims 4-11 are rejected under 35 U.S.C 103(a) as being un-patentable over Curley - Phaal in view of Gretta, Jr. (U.S. 5,850,523)

Regarding claim 4:

Curley - Phaal discloses the invention substantially as disclosed in claim 3, but does not explicitly teach running a filtering agent to convert the information from application logs into a form usable by the client-server monitoring process

In analogous art, Gretta discloses method of using filter to convert signals/packet into network monitor's compatible format: (abstract)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Gretta's ideas of converting signals into network monitor compatible format with Curley - Phaal's system in order to provide an efficiency/ flexible network monitoring system which is capable to communication with all different format communication networks: (column 3, lines 34-40; column 4, lines 1-25)

Regarding claim 5:

In addition to rejection in claim 4, Curley – Phaal - Gretta further discloses the network comprises a mainframe having at least one logical partition which generates an application log: (Curley discloses method for setting thresholds for monitoring procedures in order to determine network fails/errors: abstract; [0008]-[0011]; [0021]; [0049]; [1010])

Regarding claim 6:

In addition to rejection in claim 5, Curley – Phaal - Gretta further end-user addresses (Curley discloses network address is included in network monitor report: claim 15)

Regarding claim 7:

This claim is rejected under rationale of claim 1

Regarding claim 8:

In addition to rejection in claim 7, Curley – Phaal - Gretta further discloses wherein the data network comprises the Internet (Curley discloses network is Internet: claim 15)

Regarding claim 9:

In addition to rejection in claim 8, Curley – Phaal - Gretta further discloses determining performance and availability of the e-commerce applications in accordance with the information received through an e-commerce monitoring process: (Curley discloses method for applying the monitor process to e-commerce: [0134])

Regarding claim 10:

In addition to rejection in claim 9, Curley – Phaal - Gretta further discloses method for applying Web page, time stamps to the monitoring process: (Curley discloses method of using web-page to display monitored network performance results: [0137]; [0175])

Regarding claim 11:

In addition to rejection in claim 10, Curley – Phaal - Gretta further discloses comprising providing a central data repository: (Curley discloses method for forming a centralize report network performance results: [0084])

**Claims 12-13 are rejected under 35 U.S.C 103(a) as being un-patentable over
Curley- Phaal -Gretta in view of Goldsack et al. (U.S. 6,831,890)**

Regarding claims 12-13:

Curley – Phaal - Gretta discloses the invention substantially as disclosed in claim 4, but does not explicitly teach detecting processes running on the network and cross-references the detected processes to know processes, forming an event correlation engine in accordance with the detected processes

In analogous art, Goldsack discloses monitoring system for measuring network performance; wherein the received data is match to selection criterion in order to determine performance results: column 1, lines 57-67; column 2, lines 1-10)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Goldsack's ideas of correlating received data with selection criterion in order to determine network performance results with Curley – Phaal - Gretta's system in order to provide an efficiency/ unique network performance measured results

Claim 14 is rejected under 35 U.S.C 103(a) as being un-patentable over Curley-Phaal -Gretta-Goldsack in view of Chen et al. (U.S. 6,021,437)

Regarding claim 14:

Curley- Phaal -Gretta-Goldsack discloses the invention substantially as disclosed in claim 13, but does not explicitly teach the performance or the availability of one of the production applications is impaired, determining and reporting a cause of impairment

In analogous art, Chen teaches a real time network monitoring system which is capable to determine network problem and then subsequently provide scheme for repairing the discovered network problem: (abstract)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Chen's ideas providing scheme for repairing the discover network problem with Curley- Phaal -Gretta-Goldsack's system in order to provide an efficient communication network

The prior arts made of records and not relied upon are considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art

with respect to "System and method for continuous monitoring and measurement of performance of computers on network": 5,459,837; 6571285; 20010052013; 20030088686; 20020120727; 6631409; 6720990; 6720990; 6631409

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusions

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan-Dai Thi Truong whose telephone number is 571-272-7959. The examiner can normally be reached on Monday- Friday from 8:30am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob A. Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/26/2007



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

11/6/7